IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO.143/2000

1. Laxman Jaiwant Hornekar,
aged about 35, r/o
Cuncolim, Salcete, Goa,

2. Pritidas Lolyekar,
aged about 28,

3. Mohandas Lolyekar,
aged about 25, both
residing behind Church,
Navelim, Salcete, Goa. ... Petitioners.

Versus

1. Narahari Hornekar,
aged about 35, r/o
Cuncolim, Salcete, Goa.

2. Deleted as per Order
dt.22/02/2001. ... Respondent.

Shri Sudin M. S. Usgaokar, advocate for the petitioners.

Shri A. F. Diniz, advocate for the respondent.

CORAM: P.V. HARDAS,J.

DATE:1st February, 2002.

ORAL JUDGMENT

This Civil Revision Application is filed against the Order of Shri G. K. Bhat, Civil Judge, Junior Division, Margao, dated 17th April, 2000, at Exh.146 in Regular Civil Suit No.47/79/E, rejecting the application Exh.146, filed by the defendants to produce two documents, which are described in the said application.

2. The learned trial Judge while rejecting the application, has observed that the defendants had

not been able to show any cause for non-production of the documents earlier, at the stage contemplated by the Code of Civil Procedure. The learned trial Court also came to the conclusion that the recording of evidence in the case had been completed and the case was posted for final arguments. The learned trial Judge held that the documents were neither relevant, nor necessary for the determination of the real controversy between the parties.

3. The learned trial Judge has overlooked the averments of the defendants in Exh.146 in which the defendant no.1 states that the documents sought to be produced were old documents, which came into possession of the defendants after their evidence was closed. Thus, according to me, this was a sufficient reason for non-production of these documents earlier in the suit. Since the defendants have come into possession of these documents subsequent to their evidence, the defendants were unable to produce these documents in the suit earlier. According to me, on this count alone Exh.146 deserves to be allowed.

4. The learned Trial Judge has held that the said documents were neither relevant nor necessary for the determination of the real controversy between the parties, but unfortunately, the learned trial Judge

has not given any reasons for coming to the said conclusion. It is needless to state that whether the documents are relevant or necessary should be decided at the time of the final hearing of the suit.

5. I have heard Shri Sudin Usgaokar, learned counsel appearing for the petitioners/defendants and Shri A. F. Diniz, learned counsel appearing for the non-applicant/plaintiff. After giving anxious consideration to the rival submissions, I am of the opinion that the order of the learned Civil Judge, Junior Division, Margao, dated 17th April, 2000 is unsustainable and deserves to be quashed and set aside.

6. In the result, therefore, this Civil Revision Application is allowed. The Order of the learned Civil Judge, Junior Division, Margao, dated 17th, April, 2000, passed below Exh.146, in Regular Civil Suit No.47/79/E, is hereby quashed and set aside. The application filed by the present petitioners/defendants, Exh.146, is allowed with costs of Rs.2,500/- (Rupees Two Thousand Five Hundred only). The costs to be paid to the non-applicant/plaintiff by the defendants, on or before 22nd February, 2002. The parties to appear before the learned Civil Judge, Junior Division, Margao on 22nd February, 2002. The learned Civil Judge, Junior Division, Margao, to expeditiously

decide the civil suit.

P.V.HARDAS,J.